

Senate Bill 176

By: Senators Black of the 8th, Hufstetler of the 52nd, Robertson of the 29th, Hill of the 4th, Davenport of the 44th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 2 of Title 37 of the Official Code of Georgia Annotated, relating to
2 administration of mental health, developmental disabilities, addictive diseases, and other
3 disability services, so as to revise a cross-reference; to amend Chapter 2 of Title 47 of the
4 Official Code of Georgia Annotated, relating to the Employees' Retirement System of
5 Georgia, so as to require certain public employers to make employer and employee
6 contributions to the Employees' Retirement System of Georgia on behalf of retired members
7 employed by such employers either directly or indirectly; to provide for a definition; to revise
8 a cross-reference; to provide for related matters; to repeal conflicting laws; and for other
9 purposes.

10 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

11 **SECTION 1.**

12 Chapter 2 of Title 37 of the Official Code of Georgia Annotated, relating to administration
13 of mental health, developmental disabilities, addictive diseases, and other disability services,
14 is amended in Code Section 37-2-6.1, relating to community service boards, executive
15 director, staff, budget, facilities, powers and duties, and exemption from state and local
16 taxation, by revising subsection (k) as follows:

17 "(k) No community service board shall employ or retain in employment, either directly or
18 indirectly through contract, any person who is receiving a retirement benefit from the
19 Employees' Retirement System of Georgia except in accordance with the provisions of
20 ~~subsection (c) of Code Section 47-2-110~~ 47-2-112; provided, however, that any such
21 person who is employed as of July 1, 2004, may continue to be employed."

22 **SECTION 2.**

23 Chapter 2 of Title 47 of the Official Code of Georgia Annotated, relating to the Employees'
24 Retirement System of Georgia, is amended by revising Code Section 47-2-110, relating to

25 retirement ages, application and eligibility for a retirement allowance, suspension of
26 retirement allowance upon reemployment, and health benefits, as follows:

27 "47-2-110.

28 (a)(1)(A) Upon written application to the board of trustees, any member in service who
29 has reached 60 years of age or who has 30 years of creditable service may retire on a
30 service retirement allowance, provided that he or she has at least five years of creditable
31 service; provided, further, that if he or she became a member after July 1, 1968, he or
32 she has at least ten years of creditable service. The effective date of retirement shall be
33 the first of the month in which the application is received by the board of trustees,
34 provided that no retirement application will, in any case, be effective earlier than the
35 first of the month following the final month of the applicant's employment.
36 Applications for retirement shall not be accepted more than 90 days in advance of the
37 effective date of retirement. Separation from service pending approval of the retirement
38 application shall not affect eligibility for a retirement allowance. The provisions of this
39 subsection regarding the effective date of retirement shall apply to all persons making
40 application for retirement on or after March 15, 1979, and to all persons who have made
41 application prior to March 15, 1979, but to whom payments from the retirement system
42 have not commenced as of that date. Each employer shall certify to the board of
43 trustees the date on which the employee's employment is or will be severed.

44 (B) If the employee has not reached normal retirement age on the effective date of
45 retirement, the employer shall certify that no agreement exists to allow the employee
46 to return to service, including service as or for an independent contractor. Any return
47 to employment or rendering of any paid service by such employee, including service
48 as or for an independent contractor, for any employer within two consecutive calendar
49 months of the effective date of retirement shall render the severance invalid, nullifying
50 the application for retirement.

51 (2) Normal retirement age, for purposes of the retirement system, shall be the date the
52 employee has reached 60 years of age, provided that he or she has at least ten years of
53 creditable service or the age of an employee on the date he or she attains 30 years of
54 creditable service; provided, however, that the provisions of this paragraph are subject
55 to change by future legislation in order to comply with federal regulations. For those
56 members who are in service with the Uniform Division of the Department of Public
57 Safety as an officer, noncommissioned officer, or trooper, officers and agents of the
58 Georgia Bureau of Investigation, conservation rangers of the Department of Natural
59 Resources, or in the Department of Revenue as an alcohol and tobacco officer or agent,
60 normal retirement age shall be the date the employee has reached 55 years of age,
61 provided that he or she has at least ten years of creditable service. For purposes of

62 Section 402(l) of the federal Internal Revenue Code regarding distributions from
63 governmental plans for health and long-term care insurance for public safety officers,
64 normal retirement age shall be the earliest date when the employee has satisfied the
65 requirements for a retirement allowance under the retirement system. Except as provided
66 under Article 2 of Chapter 1 of this title, a member's right to his or her retirement
67 allowance is nonforfeitable upon attainment of normal retirement age.

68 (b)(1) ~~As used in this subsection, in addition to the definition provided in Code Section~~
69 ~~47-2-1, the term 'employer' shall also include the retired member's last employer which~~
70 ~~reported to the retirement system prior to the member's effective date of retirement. Such~~
71 ~~term shall also include the Board of Regents of the University System of Georgia.~~

72 (2) ~~Except as provided in this subsection, if a member accepts paid employment with or~~
73 ~~renders services for pay to any employer, including, without limitation, service directly~~
74 ~~or indirectly as or for an independent contractor, after his or her retirement, payment of~~
75 ~~his or her retirement allowance shall be suspended and no contributions to the retirement~~
76 ~~system shall be made on account of such service either by that member or his or her~~
77 ~~employer, provided that, upon termination of such service, all rights shall vest in that~~
78 ~~member as if he or she had continued his or her option to retire.~~

79 (3) ~~The retirement allowance of a retired member who accepts employment with or~~
80 ~~renders services to any employer after his or her retirement shall not be suspended if the~~
81 ~~employee has attained normal retirement age or has not been employed by or rendered~~
82 ~~service for any employer for at least two consecutive calendar months and performs no~~
83 ~~more than 1,040 hours of paid employment or paid service, including, without limitation,~~
84 ~~service as or for an independent contractor, for the employer in any calendar year;~~
85 ~~provided, however, that return to service as or for an independent contractor shall not~~
86 ~~result in the suspension of an employee's retirement allowance if the employing agency~~
87 ~~certifies to the board of trustees that:~~

88 (A) ~~The contracting entity has multiple employees;~~
89 (B) ~~The contracting entity has multiple contracts, and the contracts are not limited to~~
90 ~~employers, as such term is defined in Code Section 47-2-1; and~~
91 (C) ~~The contractual relationship with the employer was not created to allow a retired~~
92 ~~employee to continue employment after retirement in a position similar to the one he~~
93 ~~or she held before retirement.~~

94 (4) ~~Any employer that employs a retired plan member shall within 30 days of the~~
95 ~~employee's accepting employment notify the board of trustees in writing stating the name~~
96 ~~of the plan member and the number of hours the employee is expected to work annually~~
97 ~~and shall provide such other information as the board may request. If the retired plan~~
98 ~~member performs more than 1,040 hours in any calendar year, the employer shall so~~

notify the board of trustees as soon as such information is available. Any employer that fails to notify the board of trustees as required by this subsection shall reimburse the retirement system for any benefits wrongfully paid. It shall be the duty of the retired plan member seeking employment by the employer to notify the employer of his or her retirement status prior to accepting such position. If a retired plan member fails to so notify the employer and the employer becomes liable to the retirement system, the plan member shall hold the employer harmless for all such liability. Reserved.

(c) The board of trustees is authorized to provide by rule or regulation for the payment of benefits to members or beneficiaries of the retirement system at a time and under circumstances not provided for in this chapter to the extent that such payment is required to maintain the retirement system as a 'qualified retirement plan' for the purposes of federal income tax laws."

SECTION 3.

Said chapter is further amended in Article 6, relating to retirement and eligibility for a retirement allowance, by adding a new Code section to read as follows:

"47-2-112.

(a) As used in this Code section, and in addition to the definition provided in Code Section 47-2-1, the term 'employer' shall include a retired member's last employer which reported to the retirement system prior to the member's effective date of retirement. Such term shall also include the Board of Regents of the University System of Georgia.

(b) If a member who retired under this chapter accepts paid employment with or renders services for pay to any employer, including, without limitation, services directly or indirectly as or for an independent contractor, after his or her retirement:

(1) Such employer shall pay to the retirement system the employer and employee contributions required by this chapter for members; and

(2) Except as provided in subsection (c) of this Code section, payment of such member's retirement allowance shall be suspended.

Such member shall not receive creditable service as a result of such employment or rendering of services. Upon termination of such employment or rendering of services, all rights shall vest in such member as if he or she had continued his or her option to retire.

(c) The retirement allowance of a retired member who accepts paid employment with or renders services for pay to any employer after his or her retirement shall not be suspended if the employee has attained normal retirement age or has not been employed by or rendered services for pay to any employer for at least two consecutive calendar months and performs no more than 1,040 hours of paid employment or paid service, including, without limitation, services directly or indirectly as or for an independent contractor, for the

135 employer in any calendar year; provided, however, that return to service directly or
136 indirectly as or for an independent contractor shall not result in the suspension of an
137 employee's retirement allowance or the requirement of an employer to pay to the retirement
138 system the employer and employee contributions required by this chapter if the employing
139 agency certifies to the board of trustees that:

- 140 (1) The contracting entity has multiple employees;
141 (2) The contracting entity has multiple contracts, and the contracts are not limited to
142 employers, as such term is defined in Code Section 47-2-1; and
143 (3) The contractual relationship with the employer was not created to allow a retired
144 employee to continue employment after retirement in a position similar to the one he or
145 she held before retirement.

146 (d) Any employer that employs a retired plan member shall, within 30 days of the
147 employee accepting employment, notify the board of trustees in writing of the name of the
148 plan member and the number of hours the employee is expected to work annually and shall
149 provide such other information as the board of trustees may request. If the retired plan
150 member performs more than 1,040 hours in any calendar year, such employer shall notify
151 the board of trustees of such as soon as such information is available. Any employer that
152 fails to notify the board of trustees as required by this subsection shall reimburse the
153 retirement system for any benefits wrongfully paid. It shall be the duty of the retired plan
154 member seeking employment with the employer to notify the employer of his or her
155 retirement status prior to accepting such position. If a retired plan member fails to so notify
156 the employer and such employer becomes liable to the retirement system, the plan member
157 shall hold such employer harmless for all such liability."

158 **SECTION 4.**

159 Said chapter is further amended in Code Section 47-2-290, relating to judges, solicitors, and
160 other employees of state courts subject to merit system, membership in retirement system,
161 contributions, and exemptions, by revising subsection (c) as follows:

162 "(c) ~~Subsection (b) of Code Section 47-2-110 shall not apply to the judges and solicitors~~
163 ~~of any state court, who may retire at their discretion at any time after becoming eligible to~~
164 ~~retire. Reserved.~~"

165 **SECTION 5.**

166 All laws and parts of laws in conflict with this Act are repealed.